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August 23, 1991

Mr. Gary Fernandez  
Attorney at Law  
P.O. Box 576  
Grants, New Mexico 87020

Re: Section 19, Township 13 North, Range 10 West  
McKinley County, New Mexico

Dear Gary:

On behalf of Cerrillos Land Company ("Cerrillos"), this letter confirms our telephone conversation of today. It also provides additional details that you requested.

BACKGROUND

Cerrillos owns the mineral estate to Section 19. I am informed that your clients own the surface estate to Section 19. Your clients' ownership of the surface is subject to the right of Cerrillos to use the surface in conjunction with their ownership of the mineral estate. That right to use the surface is defined in part by a reservation in the deed to your clients (attached as Exhibit A), the stipulation entered into in 1952 regarding payment for use of the surface (attached as Exhibit B), and the Court's order on the same subject (attached as Exhibit C).

Cerrillos is preparing to participate in a removal action requested by the EPA in the initial administrative order, a copy of which you have already received, I believe. Cerrillos has engaged in subsequent discussion with EPA about the Order and will likely give consent to pursue removal action pursuant to a final order to be effective soon. In this context, Cerrillos has sought to confirm with your clients parameters of its surface use, but proposed letter agreements have been unavailing. It appears that all parties agree that Cerrillos has the right to access and use of the surface, but they disagree on whether Cerrillos must pay for borrowed material and dirt from a pit created on undisturbed land. Also, your clients have requested indemnity and Cerrillos has declined to provide it. In our conversation today, we resolved certain issues and preserved our respective positions about others.

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I confirm below our partial agreement recognizing that Cerrillos at least can begin the removal work.

IMMEDIATE ACCESS AND USE OF SURFACE

Cerrillos Land Company, on behalf of itself and other Respondents to the EPA Order, will, in the coming days, exercise its right to use the surface to begin the first phase of removal operations. Specifically, in this first phase, Cerrillos will conduct radiometric surveys and testing, and will conduct earth work only on previously disturbed areas. The purpose of the first phase is to identify through testing and survey techniques areas of elevated radioactivity and to begin to reduce that radioactivity by grading and covering radioactive material with existing piles of overburden. We agreed that during this phase of work Cerrillos will refrain from creating a borrow pit on undisturbed land.

Although we agree on Cerrillos' right to conduct this phase, we seem to disagree on whether in coming weeks Cerrillos can go further and begin a new borrow pit on undisturbed lands to get enough material to finish the job. I believe that the mineral reservation and existing payments should give Cerrillos the right to do so without further payment. On the other hand, your clients have taken the position that although Cerrillos may take material without charge from the disturbed area, Cerrillos should pay for the taking of material from a new borrow pit away from the disturbed area. You asked that I send you the attached documents for your further consideration of the issue. We agreed to revisit the issue of payment for borrowed material from undisturbed lands after more facts are gathered and we have researched the matter further. Therefore, Cerrillos or I would be in contact with you to discuss the matter further before Cerrillos would create and use any borrow pit away from the existing disturbed area. You requested that Cerrillos indemnify your clients for past and future liability occasioned by past mining operations. Cerrillos does not agree to do so, and I believe such indemnity is not required of Cerrillos as the mineral estate owner. However, I have suggested to Cerrillos that it drop its prior request that your clients release Cerrillos from any potential claims.

If you have questions as the initial phase of the removal work proceeds, please let me know. If Cerrillos decides it wants material from undisturbed land on Section 19, I will

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contact you before Cerrillos would begin any borrow pit away from the disturbed area.

Very truly yours,



Larry P. Ausherman

LPA:cpc  
Enclosures  
cc: Dennis Cole  
Linda Wandres, EPA

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